

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROOT, INC., et al.,	:	
	:	
<i>Plaintiffs,</i>	:	Case No. 2:23-cv-512
	:	Judge Sarah D. Morrison
vs.	:	Magistrate Judge Elizabeth A.
	:	Preston Deavers
BRINSON CALEB SILVER, et al.,	:	
	:	
<i>Defendants.</i>	:	

**MOTION OF RECEIVER, JERRY E. PEER, JR., TO EMPLOY SERHANT AND
MARCO TINE AS REAL ESTATE BROKER**

Now comes the Court appointed receiver herein, Jerry E. Peer, Jr., (“Receiver”), by and through his undersigned counsel, and hereby moves this Court for an Order permitting Receiver to engage Serhant and Marco Tiné (“Broker”), collectively, as its real estate Broker for the real estate located at 9125 North Bayshore Drive, Miami, Florida 33138 (“Property”) and owned by Eclipse Home Design, LLC and approve the *Exclusive Right of Sale Listing Agreement* (“Listing Agreement”), attached hereto as “**Exhibit A**” and authorizing Broker to advertise and market the Property for sale.

A Memorandum in Support of this Motion is attached hereto.

Respectfully submitted,

PETERSON CONNERS LLP

/s/ Istvan Gajary
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Counsel for Receiver, Jerry E. Peer, Jr.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

1. In accordance with the requirements of this Court's *Order*, filed May 12, 2023 [Doc. # 99], *Order Appointing Receiver*, filed May 17, 2023 [Doc. # 101], and *Order Amending Order Appointing Receiver*, filed June 7, 2023 [Doc. # 120] (hereinafter collectively "Receiver Order"), Jerry E. Peer, Jr. ("Receiver"), was appointed as Receiver of all monetary and real property assets of Mr. Brinson Caleb Silver, Collateral Damage, LLC and Eclipse Home Design, LLC (hereinafter collectively "Defendants"). Since his appointment, Receiver has taken possession and control of the real estate of Defendant located at 9125 North Bayshore Drive, Miami, Florida 33138 ("Property"). Pursuant to the Receiver's Order, Receiver has further been engaged for the purpose of negotiating and effecting an orderly sale of the Property in or outside the ordinary course of business. Receiver Order at p. 9, ¶ 2(k). Since taking possession of the Property and conducting some preliminary determinations of the value of the Property, Receiver has determined that it is in the best interests of the receivership estate, and its respective creditors, to employ a broker for purposes of preparing, marketing and offering the Property for sale.

II. LAW AND ARGUMENT

2. Pursuant to the Receiver Order,

The Receiver is authorized to negotiate and effect an orderly sale, transfer, use, or assignment of all or a portion of any of the Property in or outside of the ordinary course of business of the Receivership Defendants and, from the proceeds thereof, to pay the secured and unsecured indebtedness of the Property, including the Real Property. Payments to creditors by the Receiver shall include trade indebtedness which arises during the course of the Receiver's operation of the Property, which shall be paid first from the sale proceeds, together with the fees and expenses of the Receiver and his attorneys, accountants, and other professionals. The Receiver is authorized to conduct such a sale of the Property in any manner which he, in his good faith and reasonable discretion, believes will maximize the proceeds received from the sale....

See Receiver Order, ¶ 2(k).

“A judge who finds it necessary to appoint a Receiver should see that the entity, and therefore assets, are liquidated as economically and speedily as possibly unless its continuance is demonstrated to be beneficial to the creditors. *Jones v. Proctorville* (1961 C.A. 6, Ohio) 290 F. 2d 49.

3. Due to the unique nature of the Property, it is the Receiver's request at this time that the Property be sold at private sale free and clear of all liens, claims, interests, and encumbrances with said liens, claims, interests, and encumbrances attaching to the net proceeds of sale, which shall be disbursed to secured creditors holding valid and existing liens, in order of their respective priorities. Under Ohio law,

[u]nder the control of the court that appointed the receiver as provided in section 2735.01 of the Revised Code, the receiver may do any of the following: ... Sell and make transfers of real or personal property.

R.C. § 2735.04 (B)(5). Additionally, under Florida law,

Among other powers: [t]he receiver: [m]ay dispose of all or any part of the assets of the corporation wherever located, at public or private sale, if authorized by the court.

Fla.Stat. § 607.1432(3)(a)(1). Furthermore, under federal law,

The appointing court may authorize a receiver to . . . sell . . . such real and personal property as the court shall direct.

28 U.S.C. § 3103(b)(1)(B).

Thus, this Court can allow and order that the Property be transferred to a buyer free and clear of all liens, claims and encumbrances but with the liens attaching to the proceeds of the sale in order of their respective priorities. R.C. § 2754.04(D)(3).

4. Given the nature of the Property involved, Receiver determined that Serhant and Marco Tiné, collectively (“Broker”) is the best qualified to market and sell the Property. More specifically, Broker is a full-service real estate firm and experienced in the disposition of residential properties of this type and under the same or similar condition (under construction/renovation). As a result of Broker’s experience, Broker has access to potential buyers and a clear focus on current market trends and conditions making Broker duly qualified to market and sell the Property. Accordingly, Receiver has determined that employing Broker presents the best opportunity to maximize the highest and best value of the Property on behalf of Defendant’s receivership estate and is hereby seeking the Court’s approval to employ and retain Broker to sell the Property and to enter into the *Exclusive Right of Sale Listing Agreement* as to the Property (“Listing Agreement”), a copy of which is attached hereto as “**Exhibit A.**”.

5. Pursuant to the proposed Listing Agreement, Broker shall be paid a six percent (6.00%) commission from the gross sales price upon the closing for the sale of the Property or any part thereof, and in accordance with the terms of the Listing Agreement a processing fee of \$395.00. It has been determined by Receiver and Broker that the proposed listing amounts shall initially be as indicated in the Listing Agreement, which may be modified by agreement of the parties or order of this Court. As a result of Broker’s established business, highly regarded reputation and significant experience, Broker has access to potential buyers with a clear focus on current market trends and conditions, making Broker duly qualified to market the Property. Accordingly, Receiver has determined that the employment of Broker presents the best opportunity to maximize the highest and best value of the Property and is hereby seeking the Court’s approval

to employ and retain Broker to market the Property for sale, free and clear of any and all interest, liens, claims and encumbrances.

6. Broker's State of Florida's brokerage license is in good standing, a conflict check has been conducted, insuring no conflicts presently exist with its representation of Receiver in this matter, and Broker has all insurance coverage as required by the State of Florida. Pursuant to the Listing Agreement, Broker has affirmatively stated that it will avoid any conflict of interest in connection with the marketing and sale of the Property; that gross proceeds of any sale or other transaction, which come into its hands will be turned over to Receiver or placed in its separate trust account, for the benefit of Receiver, and that it will not, under any circumstances, directly or indirectly purchase, acquire, or accept any interest in any property related to the receivership estate.

7. Receiver hereby further requests authority from this Court to enter into a real estate purchase contract for the sale of the Property, subject to this Court's approval. Upon executing a real estate purchase contract, Receiver will seek authority from this Court and notice all parties in interest thereto to accept and close any offer as to the Property and to convey fee simple title to the Property, free and clear of any and all interests, liens, claims and encumbrances provided any such offer, in the discretion of Receiver, is commercially reasonable and represents the highest and best offer under the particular circumstances.

8. At this time, Receiver does not seek authority to make a distribution of proceeds from the sale of the Property. Once entering into a contract for the sale of the Property, Receiver will submit a motion to approve the contract and the terms and conditions outlined therein. Unless otherwise ordered by this Court, Receiver anticipates upon approval of a contract by this Court, Receiver will close the transaction free and clear of all liens, claims, and encumbrances, other than the lien of the treasurer of the county in which the real property is located for real estate taxes and assessments, holding all proceeds of sale pending approval of any proposed distributions. It is

Receiver's recommendation that all liens, claims and encumbrances in and to the Property will attach to any proceeds realized from the sale, except for Broker's compensation and other administrative fees and expenses, in accordance with their respective lien validity and priority.

III. CONCLUSION

Based upon the foregoing, Receiver hereby moves the Court for an Order (i) approving the engagement of Broker for the marketing and sale of the Property on such terms and conditions as outlined in the Listing Agreement; (ii) permitting Receiver to enter into the Listing Agreement; and (iii) authorizing Receiver, in his discretion, to execute a real estate purchase agreement for the Property or part thereof, subject to this Court's approval.

Respectfully submitted,

PETERSON CONNERS LLP

/s/ Istvan Gajary
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Jerry E. Peer, Jr. (0075128)
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jpeer@petersonconners.com
igajary@petersonconners.com
Counsel for Receiver, Jerry E. Peer, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was filed electronically on this 1st day of November, 2023 with the Clerk of Court using the CM/ECF system. Service will be made through the Court's CM/ECF system on all parties and attorneys so registered, and all parties may access this filing through the Court's system.

A copy was also sent by regular U.S.P.S. mail and by electronic mail to the following:

Collateral Damage, LLC
101 N. Brand Blvd., 11th Floor
Glendale, CA 91203

Eclipse Home Design, LLC
651 N. Broad Street, Suite 201
Middletown, De 19709

Paige McDaniel
5576 Alexanders Lake Road
Stockbridge, GA 30281

Brinson Caleb Silver
2543 Walnut Avenue
Venice CA 90291

/s/ Istvan Gajary
Istvan Gajary (0089084)

Exclusive Right of Sale Listing Agreement

1 This Exclusive Right of Sale Listing Agreement ("Agreement") is between
 2* ECLIPSE HOME DESIGN LLC ("Seller")
 3* and Serhant ("Broker")

4 **1. Authority to Sell Property:** Seller gives Broker the EXCLUSIVE RIGHT TO SELL the real and personal
 5 property (collectively "Property") described below, at the price and terms described below, beginning
 6* 09/29/2023 and terminating at 11:59 p.m. on 07/31/2024 ("Termination Date"). Upon
 7 full execution of a contract for sale and purchase of the Property, all rights and obligations of this Agreement will
 8 automatically extend through the date of the actual closing of the sales contract. Seller and Broker acknowledge
 9 that this Agreement does not guarantee a sale. This Property will be offered to any person without regard to race,
 10 color, religion, sex, handicap, familial status, national origin, or any other factor protected by federal, state, or local
 11 law. Seller certifies and represents that she/he/it is legally entitled to convey the Property and all improvements.

12 **2. Description of Property:**
 13* (a) **Street Address:** 9125 North Bayshore Drive, Miami, FL 33138

14
 15* Legal Description: WATERSEDGE PB 9-141 LOT C LESS W25FT & LESS S12.5FT LOT SIZE 50.000 X 167 OR 15973-3580 15991-2804
 16* 0693 1 COC 24849-1532 04 2006 1 ☐ See Attachment

17* (b) **Personal Property, including appliances:** _____
 18* ☐ See Attachment

19 (c) **Occupancy:**
 20* Property ☐ is ☒ is not currently occupied by a tenant. If occupied, the lease term expires _____

21 **3. Price and Terms:** The property is offered for sale on the following terms or on other terms acceptable to Seller:

22* (a) **Price:** \$5,500,000

23* (b) **Financing Terms:** ☒ Cash ☒ Conventional ☐ VA ☐ FHA ☐ Other (specify) _____
 24* ☐ **Seller Financing:** Seller will hold a purchase money mortgage in the amount of \$ _____
 25* with the following terms: _____

26* ☐ **Assumption of Existing Mortgage:** Buyer may assume existing mortgage for \$ _____ plus
 27 an assumption fee of \$ _____. The mortgage is for a term of _____ years beginning in
 28* _____, at an interest rate of _____% ☐ fixed ☐ variable (describe) _____.

29* Lender approval of assumption ☐ is required ☐ is not required ☐ unknown. **Notice to Seller: (1)** You may
 30 remain liable for an assumed mortgage for a number of years after the Property is sold. Check with your
 31 lender to determine the extent of your liability. Seller will ensure that all mortgage payments and required
 32 escrow deposits are current at the time of closing and will convey the escrow deposit to the buyer at closing.
 33 (2) Extensive regulations affect Seller financed transactions. It is beyond the scope of a real estate licensee's
 34 authority to determine whether the terms of your Seller financing agreement comply with all applicable laws
 35 or whether you must be registered and/or licensed as a loan originator before offering Seller financing. You
 36 are advised to consult with a legal or mortgage professional to make this determination.

37 (c) **Seller Expenses:** Seller will pay mortgage discount or other closing costs not to exceed _____% of the
 38 purchase price and any other expenses Seller agrees to pay in connection with a transaction.

39 **4. Broker Obligations:** Broker agrees to make diligent and continued efforts to sell the Property in accordance
 40 with this Agreement until a sales contract is pending on the Property.

41 **5. Multiple Listing Service:** Placing the Property in a multiple listing service (the "MLS") is beneficial to Seller
 42 because the Property will be exposed to a large number of potential buyers. As a MLS participant, Broker is
 43 obligated to enter the Property into the MLS within one (1) business day of marketing the Property to the public
 44 (see Paragraph 6(a)) or as necessary to comply with local MLS rule(s). This listing will be published accordingly in
 45 the MLS unless Seller directs Broker otherwise in writing. (See paragraph 6(b)(i)). Seller authorizes Broker to
 46 report to the MLS this listing information and price, terms, and financing information on any resulting sale for use
 47 by authorized Board / Association members and MLS participants and subscribers unless Seller directs Broker
 48 otherwise in writing.

6. Broker Authority: Seller authorizes Broker to:**(a) Market the Property to the Public (unless limited in Paragraph 6(b)(i) below):**

(i) Public marketing includes, but is not limited to, flyers, yard signs, digital marketing on public facing websites, brokerage website displays (i.e. IDX or VOW), email blasts, multi-brokerage listing sharing networks and applications available to the general public.

(ii) Public marketing also includes marketing the Property to real estate agents outside Broker's office.

(iii) Place appropriate transaction signs on the Property, except if Paragraph 6(b)(i) is checked below.

(iv) Use **Seller's** name in connection with marketing or advertising the Property.

☐ Display the Property on the Internet except the street address.

(b) Not Publicly Market to the Public/Seller Opt-Out:

(i.) ☐ **Seller** does not authorize **Broker** to display the Property on the MLS.

(ii.) **Seller** understands and acknowledges that if **Seller** checks option 6(b)(i), a For Sale sign will not be placed upon the Property and

(iii.) **Seller** understands and acknowledges that if **Seller** checks option 6(b)(i), **Broker** will be limited to marketing the Property only to agents within **Broker's** office.

Initials of Seller

(c) Obtain information relating to the present mortgage(s) on the Property.

(d) Provide objective comparative market analysis information to potential buyers.

(e) (Check if applicable) ☐ Use a lock box system to show and access the Property. A lock box does not ensure the Property's security. **Seller** is advised to secure or remove valuables. **Seller** agrees that the lock box is for **Seller's** benefit and releases **Broker**, persons working through **Broker**, and **Broker's** local Realtor Board / Association from all liability and responsibility in connection with any damage or loss that occurs.

☐ Withhold verbal offers. ☐ Withhold all offers once **Seller** accepts a sales contract for the Property.

(f) Virtual Office Websites: Some real estate brokerages offer real estate brokerage services online. These websites are referred to as Virtual Office Websites ("VOWs"). An automated estimate of market value or reviews and comments about a property may be displayed in conjunction with a property on some VOWs. Anyone who registers on a VOW may gain access to such automated valuations or comments and reviews about any property displayed on a VOW. Unless limited below, a VOW may display automated valuations or comments and reviews about this Property.

☒ **Seller** does not authorize an automated estimate of the market value of the listing (or a hyperlink to such estimate) to be displayed in immediate conjunction with the listing of this Property.

☒ **Seller** does not authorize third parties to write comments or reviews about the listing of the Property (or display a hyperlink to such comments or reviews) in immediate conjunction with the listing of this Property.

7. Seller Obligations: In consideration of Broker's obligations, Seller agrees to:

(a) Cooperate with **Broker** in carrying out the purpose of this Agreement, including referring immediately to **Broker** all inquiries regarding the Property's transfer, whether by purchase or any other means of transfer.

(b) Recognize **Broker** may be subject to additional MLS obligations and potential penalties for failure to comply with them.

(c) Provide **Broker** with keys to the Property and make the Property available for **Broker** to show during reasonable times.

(d) Inform **Broker** before leasing, mortgaging, or otherwise encumbering the Property.

(e) Indemnify **Broker** and hold **Broker** harmless from losses, damages, costs, and expenses of any nature, including attorney's fees, and from liability to any person, that **Broker** incurs because of (1) **Seller's** negligence, representations, misrepresentations, actions, or inactions; (2) the use of a lock box; (3) the existence of undisclosed material facts about the Property; or (4) a court or arbitration decision that a broker who was not compensated in connection with a transaction is entitled to compensation from **Broker**. This clause will survive **Broker's** performance and the transfer of title.

(f) Perform any act reasonably necessary to comply with FIRPTA (Section 1445 of the Internal Revenue Code).

(g) Make all legally required disclosures, including all facts that materially affect the Property's value and are not readily observable or known by the buyer. **Seller** certifies and represents that **Seller** knows of no such material facts (local government building code violations, unobservable defects, etc.) other than the following:

Seller will immediately inform **Broker** of any material facts that arise after signing this Agreement.

(h) Consult appropriate professionals for related legal, tax, property condition, environmental, foreign reporting requirements, and other specialized advice.

8. **Compensation:** Seller will compensate Broker as specified below for procuring a buyer who is ready, willing, and able to purchase the Property or any interest in the Property on the terms of this Agreement or on any other terms acceptable to Seller. Seller will pay Broker as follows (plus applicable sales tax):
- (a) 6 % of the total purchase price plus \$395 Processing fee OR \$ _____, no later than the date of closing specified in the sales contract. However, closing is not a prerequisite for Broker's fee being earned.
- (b) _____ (\$ or %) of the consideration paid for an option, at the time an option is created. If the option is exercised, Seller will pay Broker the Paragraph 8(a) fee, less the amount Broker received under this subparagraph.
- (c) _____ (\$ or %) of gross lease value as a leasing fee, on the date Seller enters into a lease or agreement to lease, whichever is earlier. This fee is not due if the Property is or becomes the subject of a contract granting an exclusive right to lease the Property.
- (d) Broker's fee is due in the following circumstances: (1) If any interest in the Property is transferred, whether by sale, lease, exchange, governmental action, bankruptcy, or any other means of transfer, regardless of whether the buyer is secured by Seller, Broker, or any other person. (2) If Seller refuses or fails to sign an offer at the price and terms stated in this Agreement, defaults on an executed sales contract, or agrees with a buyer to cancel an executed sales contract. (3) If, within 90 days after Termination Date ("Protection Period"), Seller transfers or contracts to transfer the Property or any interest in the Property to any prospects with whom Seller, Broker, or any real estate licensee communicated regarding the Property before Termination Date. However, no fee will be due Broker if the Property is relisted after Termination Date and sold through another broker.
- (e) **Retained Deposits:** As consideration for Broker's services, Broker is entitled to receive _____ % (50% if left blank) of all deposits that Seller retains as liquidated damages for a buyer's default in a transaction, not to exceed the Paragraph 8(a) fee.
9. **Cooperation with and Compensation to Other Brokers: Notice to Seller:** The buyer's broker, even if compensated by Seller or Broker, may represent the interests of the buyer. Broker's office policy is to cooperate with all other brokers except when not in Seller's best interest and to offer compensation in the amount of ☒ 3 % of the purchase price or \$ _____ to a single agent for the buyer; ☒ 3 % of the purchase price or \$ _____ to a transaction broker for the buyer; and ☐ % of the purchase price or \$ _____ to a broker who has no brokerage relationship with the buyer.
- ☐ None of the above. (If this is checked, the Property cannot be placed in the MLS.)

10. Brokerage Relationship:

NO BROKERAGE RELATIONSHIP NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS.

As a real estate licensee who has no brokerage relationship with you, _____ and its associates owe to you the following duties:

1. Dealing honestly and fairly;
2. Disclosing all known facts that materially affect the value of residential real property which are not readily observable to the buyer;
3. Accounting for all funds entrusted to the licensee.

Signature

Date

Signature

Date

11. **Conditional Termination:** At Seller's request, Broker may agree to conditionally terminate this Agreement. If Broker agrees to conditional termination, Seller must sign a withdrawal agreement, reimburse Broker for all direct expenses incurred in marketing the Property, and pay a cancellation fee of \$ _____ plus applicable sales tax. Broker may void the conditional termination, and Seller will pay the fee stated in Paragraph 8(a) less the cancellation fee if Seller transfers or contracts to transfer the Property or any interest in the Property during the time period from the date of conditional termination to Termination Date and Protection Period, if applicable.

Seller _____ and Broker/Sales Associate _____ acknowledge receipt of a copy of this page, which is Page 3 of 4.

12. Dispute Resolution: This Agreement will be construed under Florida law. All controversies, claims, and other matters in question between the parties arising out of or relating to this Agreement or the breach thereof will be settled by first attempting mediation under the rules of the American Arbitration Association or other mediator agreed upon by the parties. If litigation arises out of this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees and costs, unless the parties agree that disputes will be settled by arbitration as follows: **Arbitration:** By initialing in the space provided, **Seller** [] [] Sales Associate [] and **Broker** [] agree that disputes not resolved by mediation will be settled by neutral binding arbitration in the county in which the Property is located in accordance with the rules of the American Arbitration Association or other arbitrator agreed upon by the parties. Each party to any arbitration (or litigation to enforce the arbitration provision of this Agreement or an arbitration award) will pay its own fees, costs, and expenses, including attorney's fees, and will equally split the arbitrator's fees and administrative fees of arbitration.

13. Miscellaneous: This Agreement is binding on **Seller's** and **Broker's** heirs, personal representatives, administrators, successors, and assigns. **Broker** may assign this Agreement to another listing office. This Agreement is the entire agreement between **Seller** and **Broker**. No prior or present agreements or representations will be binding on **Seller** or **Broker** unless included in this Agreement. Electronic signatures are acceptable and will be binding. Signatures, initials, and modifications communicated by facsimile will be considered as originals. The term "buyer" as used in this Agreement includes buyers, tenants, exchangors, optionees, and other categories of potential or actual transferees.

14. Additional Terms: The listing price of \$5.5 million is based on property renovation . However, the listing price may be reduced to \$3.9 million prior to the commencement of property renovation.

Seller's Signature: [] **Date:** _____

Home Telephone: _____ Work Telephone: _____ Facsimile: _____

Address: _____

Email Address: _____

Seller's Signature: [] **Date:** _____

Home Telephone: _____ Work Telephone: _____ Facsimile: _____

Address: _____

Email Address: _____

Authorized Sales Associate or Broker: [] **Date:** _____

Brokerage Firm Name: SERHANT Telephone: 7867978463

Address: 1688 Meridian Avenue, Suite 700, Miami Beach, FL 33139

Copy returned to **Seller** on _____ by ☐ email ☐ facsimile ☐ mail ☐ personal delivery.

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